



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0982]

RIN 1625 - AA00

Safety Zone; Mamala Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: On October 10, 2017, the commercial fishing vessel PACIFIC PARADISE ran aground off of the navigable waters of Mamala Bay approximately 400 yards southwest of Kaimana Beach, Oahu, Hawaii. The Coast Guard established a temporary safety zone around the grounded vessel to facilitate vessel salvage operations and on October 18, 2017, the safety zone was extended for two additional weeks. To date, the vessel remains grounded. Accordingly, effective November 1, 2017, the Coast Guard extends the safety zone for an additional thirty days to facilitate ongoing salvage and subsequent removal operations. The extension of this safety zone is necessary to protect personnel, vessels and the marine environmental from potential hazards associated with ongoing operations to salvage and remove a grounded vessel in this area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 8:00 a.m. on December 1, 2017. For the purposes of

enforcement, actual notice will be used from 8:00 a.m. on November 1, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0982 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Bannon, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541-4359 or john.e.bannon@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary final rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On October 10, 2017, the fishing vessel PACIFIC PARADISE ran aground off of the navigable waters of Mamala Bay approximately 400 yards southwest of Kaimana Beach, Oahu, Hawaii at position 21°15.69'N; 157°49.49'W. On October 11, 2017, the Coast Guard established a seven day temporary safety zone encompassing all waters extending 500 yards in all directions around the grounded vessel to facilitate vessel salvage operations and protect personnel, vessels and the marine environment from the hazards associated with them. Due to the emergent nature of the grounding and subsequent removal operations, the temporary final rule (TFR) safety zone was not initially published in the **Federal Register**. On October 18, 2017, the safety zone was

extended for two additional weeks to account for delays in salvage operations due to ocean and weather conditions. The safety zone extension was published in the **Federal Register** (82 FR 49111) on October 24, 2017. Ongoing challenges with the salvage efforts necessitate a second extension, this for thirty days, of the safety zone.

The safety zone continues to encompass all waters extending 500 yards in all directions around the grounded fishing vessel located approximately 400 yards southwest of Kaimana Beach at position 21°15.69'N; 157°49.49'W. When the vessel is off the reef, the safety zone will shift to a moving safety zone extending 500 yards in all directions around the vessel and continue until the removal operation is complete.

The Coast Guard is extending the existing safety zone without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the initial estimate to salvage the vessel from the grounding was estimated at one week or less. Immediate action remains needed to respond to the safety hazards associated with this fishing vessel salvage effort for an estimated additional thirty days. Therefore, publishing an NPRM is impracticable and contrary to public interest.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons stated in the preceding paragraph, delaying the effective period of this safety zone would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule pursuant to 33 U.S.C. 1231. On October 10, 2017, the Coast Guard was informed the commercial fishing vessel PACIFIC PARADISE ran aground in Mamala Bay, Oahu, Hawaii, near Waikiki's Kaimana Beach. Coast Guard COTP Sector Honolulu determined that potential hazards associated with the salvage and removal operations constituted a safety concern and thus established a safety zone to protect personnel, vessels, and the marine environment during ongoing operations to remove the grounded vessel from a reef in high winds and seas followed by the towing and disposal of the disabled vessel.

IV. Discussion of the Rule

This rule is effective from 8:00 a.m. on November 1, 2017 through 8:00 a.m. on December 1, 2017, or until salvage operations are complete, whichever is earlier. If the safety zone is terminated prior to 8:00 a.m. on December 1, 2017, the Coast Guard will provide notice via a broadcast notice to mariners.

The temporary safety zone encompasses all waters extending 500 yards in all directions around the location of the grounded vessel 400 yards southwest of Kaimana Beach near position: 21° 15.69' N; 157° 49.49' W. This zone extends from the surface of the water to the ocean floor. The safety zone is currently stationary around the grounded vessel. When the vessel is removed from the reef, the safety zone will shift to a moving safety zone and remain so until the tow and disposal operation is complete. The zone shall continue to encompass 500 yards in all directions around the commercial fishing vessel. When the vessel is off the reef and removal operations commence, the Coast Guard will provide notice via a broadcast notice to mariners. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP Honolulu or his designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone away from the reef or during the salvage tow, which would impact only a small designated area of the waters off Kaimana Beach and Waikiki where vessel traffic is normally low. Closer to shore, the waterway is used primarily for beach recreation activities. Offshore of the beach, waterway traffic is primarily tourism related operations which will not be affected by the tow due to the open space in the area. Moreover, vessels wishing to enter the zone may seek permission as set forth below.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. The safety zone is limited in size and duration, and the location of the grounded vessel is not in an actively used navigable waterway. Once the vessel is free from the reef, the tow evolution will not impact existing waterway users. Furthermore, mariners may request to enter the zone by contacting the COTP.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone extension for duration of thirty additional days, or until the salvage operation is suspended. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0982 to read as follows:

§ 165.T14-0982 Safety Zone; Mamala Bay, Oahu, HI.

(a) Location. The safety zone is located within the COTP Honolulu Zone (See 33 CFR 3.70-10) and will encompass all navigable waters extending 500 yards in all directions from the fishing vessel PACIFIC PARADISE, which is grounded on a reef approximately 400 yards southwest of Kaimana Beach at position: 21°15.69' N; 157°49.49' W. Once the commercial fishing vessel PACIFIC PARADISE is removed from the reef, the safety zone will become a moving safety zone extending 500 yards in all directions from the vessel to facilitate the towing and disposal of the vessel. The safety zone will be enforced and throughout the salvage, transit and removal operations within Mamala Bay, Keehi Lagoon, or Honolulu Harbor. This zone extends from the surface of the water to the ocean floor.

(b) Enforcement period. This rule is effective from 8:00 a.m. on November 1, 2017 through 8:00 a.m. on December 1, 2017, or until salvage recovery operations are complete, whichever is earlier. If the safety zone is terminated prior to 8:00 a.m. on December 1, 2017, the Coast Guard will provide notice via a broadcast notice to mariners.

(c) Regulations. The general regulations governing safety zones contained in §165.23 apply to the safety zone created by this temporary final rule.

(1) All persons are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless expressly authorized by the COTP Honolulu or his designated representative.

(3) Persons desiring to transit the stationary or moving safety zone identified in paragraph (a) of this section may contact the COTP at the Command Center telephone number (808) 842-

2600 and (808) 842-2601, fax (808) 842-2642 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) Notice of enforcement. The COTP will provide notice of enforcement of the safety zone described in this section via verbal broadcasts and written notice to mariners and the general public.

(e) Definitions. As used in this section, “designated representative” means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the safety zone described in paragraph (a) of this section.

Dated: November 2, 2017.

M.C. Long,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu.

[FR Doc. 2017-24290 Filed: 11/7/2017 8:45 am; Publication Date: 11/8/2017]